

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 PETER M. FITZGERALD,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

Case No. C23-5726-RSM

ORDER GRANTING FEES UNDER THE  
EQUAL ACCESS TO JUSTICE ACT, 28  
U.S.C. § 2412(d)

14 This matter comes before the Court on Plaintiff's Motion for Attorney Fees under the  
15 Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. #19.

16 Under EAJA, the Court must award attorney's fees to the prevailing party in an action  
17 such as this unless it finds the government's position was "substantially justified" or that special  
18 circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). EAJA creates a presumption  
19 that fees will be awarded to a prevailing party, but Congress did not intend fee shifting to be  
20 mandatory. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995); *Zapon v. United States Dep't of*  
21 *Justice*, 53 F.3d 283, 284 (9th Cir. 1995). Rather, the Supreme Court has interpreted the term  
22 "substantially justified" to mean that a prevailing party is not entitled to recover fees if the  
23 government's position is "justified to a degree that could satisfy a reasonable person." *Pierce v.*  
24

1 *Underwood*, 487 U.S. 552, 566 (1992). The decision to deny EAJA attorney's fees is within the  
2 discretion of the court. *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002). Attorneys' fees  
3 under EAJA must be reasonable. 28 U.S.C. § 2412(d)(2)(A); *Hensley v. Eckerhart*, 461 U.S. 424,  
4 433 (1983).

5 The Motion is timely, as Plaintiff had a 60-day appeal period, plus the 30-day period in  
6 §2412(d)(1)(B), from the entry of final judgment on December 21, 2023, to file a timely EAJA  
7 application. *Akopyan v. Barnhart*, 296 F.3d 852 (9<sup>th</sup> Cir. 2002); *Melkonyan v. Sullivan*, 501 U.S.  
8 89, 94-96 (1991); FED. R. App. P. 4(a). Furthermore, upon review of the record, the Court  
9 determines that Plaintiff is the prevailing party, the requested fees are reasonable, and the  
10 Government's position was not substantially justified. Defendant makes no objections to  
11 Plaintiff's request. Dkt. #21. In short, the requirements of § 2412(d)(1)(B) are met.

12 Having thoroughly considered the party's briefings and the relevant record, the Court  
13 hereby GRANTS the motion and awards Plaintiff \$8,361.39 in attorney and paralegal fees,  
14 subject to any offset allowed under the Treasury Offset Program. *See Astrue v. Ratliff*, 560 U.S.  
15 586, 589-90 (2010). Payment of EAJA fees shall be sent to Plaintiff's attorney by check: H. Peter  
16 Evans at Evans & Evans, PC, 222 NE Park Plaza Drive, Suite 113, Vancouver, WA 98684.

17  
18 DATED this 13th day of June, 2024.

19  
20 

21 RICARDO S. MARTINEZ  
22 UNITED STATES DISTRICT JUDGE  
23  
24